

Statement of Robert D. Comfort
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Testimony Before the Senate Committee on Commerce, Science and Transportation

Hearing on Internet Taxation
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Mr. Chairman, Senator Hollings, and members of the Committee, my name is Robert Comfort. I am Amazon.com's Vice President for Tax and Tax Policy. A pioneer in electronic commerce, Amazon.com opened its virtual doors in July 1995 with a mission to use the Internet to transform book buying into the easiest and most enjoyable shopping experience possible. Today, Amazon.com also offers consumer electronics, toys, CDs, videos, DVDs, kitchenware, tools, and much more. Some 30 million customers in more than 160 countries have made us the Internet's number one retailer.

Amazon.com is grateful for this opportunity to address the issue of Internet taxation. As a proponent of widespread, low-cost access to the Internet and the opportunities it offers Americans and the American economy, Amazon.com fully supports Congressional action to extend the Internet Tax Freedom Act's moratorium on multiple or discriminatory taxes on the Internet. Extending the moratorium for a few years would be helpful, but a permanent moratorium would be preferable.

Although not directly related to the moratorium, it has been suggested that Congress should simultaneously define the circumstances in which States could require all remote sellers to collect sales taxes, without imposing an unconstitutional burden upon interstate commerce. It is widely agreed that this would require the States to simplify their sales and use tax regimes and to achieve some degree of uniformity from State to State. If substantial simplification and uniformity were not achieved, any imposition of a collection obligation in the absence of judicially defined "nexus" would continue to impose an unconstitutional burden upon remote sellers, as described in the Supreme Court's decisions in *National Bellas Hess* and *Quill*.

Consequently, Mr. Chairman, Amazon.com urges Congress, should it decide to address the sales tax collection issue, to establish clearly defined goals for the States to achieve, and to scrutinize with care the results of their efforts, in order to assure Congress and the American people of adherence to the strictures of the Commerce Clause.

Amazon.com would support any properly focused effort among the States to bring their sales tax systems into conformity with the Constitution as applicable to remote sellers. Amazon.com is quite concerned, however, that over the life of the Streamlined Sales Tax Project, most of the politically difficult decisions required to achieve substantial simplification and uniformity have either been deferred or completely removed from consideration. Given this history, Amazon.com strongly believes that Congress must not authorize States to require all remote sellers to collect sales tax based solely upon representations that the States will address, somewhere down the road, a variety of criteria for simplification.

Instead, Congress should provide the States with specific guidance about the criteria that Congress deems necessary for constitutionally acceptable simplification of the current sales tax system. The States should be free to decide whether or not they wish to make these changes to their sales tax

systems, in exchange for subsequent Congressional approval. This process would respect state sovereignty while providing motivation and a clear roadmap for simplification. And it would allow Congress to conduct a follow-up review to ensure that the states have indeed genuinely simplified their sales and use tax systems in order to eliminate the unconstitutional burden on interstate commerce.

I cannot emphasize this point too strongly, Mr. Chairman. The states have repeatedly demonstrated inability or unwillingness to grapple with the issues that must be resolved in order to achieve genuine simplification. The Streamlined Sales Tax Project is only the most recent example. If the states are free to leave uniformity, sourcing, and compensation issues for "future consideration," while proclaiming that their systems have been streamlined, they will do just that. Congress must review their actions at the end of the simplification process, not approve them in advance. Otherwise, Amazon.com and all other remote sellers would lose our Commerce Clause protections, even though the unreasonable burdens imposed upon our businesses by the crazy-quilt sales and use tax regimes would remain.

Congress must also provide a mechanism to ensure that States that are permitted to require all remote sellers to collect sales tax will continue to comply with the Congressionally mandated, constitutionally required criteria for simplification and uniformity. If, in the future, a State chooses to diverge from these criteria, then the constitutional limitations set forth in National Bellas Hess and Quill must once again apply to that State.

Amazon.com believes that, at a minimum, States and localities must meet and maintain the following requirements for simplification and uniformity: Sales tax rates applicable to remote sales must be determinable based solely on the geographic area information included in a customer's address. Thus, although a single, nationwide rate applicable to all remote sales would be the simplest approach, Amazon.com does not believe it would be necessary; one rate per state would work very well. Five-digit zip codes would be the smallest acceptable sales tax jurisdiction areas, because consumers don't know - and remote sellers would have no way of determining - any smaller or different tax rate areas.

Uniform definitions and rules must define what is includable in the sales tax base, and provide specific rules regarding the allocation of shipping and handling charges, coupons, discounts, and other charges to orders that contain both taxable and nontaxable goods. Uniform rules also must cover the refund of sales taxes in the case of customer returns where the seller retains shipping charges.

Uniform definitions and sourcing rules must be developed for the sale of digital goods, such as downloaded music and software.

States must provide reasonable compensation to remote sellers for collecting sales tax. At a minimum, such compensation must encompass the cost incurred by remote sellers for credit card processing fees assessed as a percentage of the total amount of both the price of the item sold and the applicable sales tax.

Lastly, State and local governments should be required to assist remote sellers in educating consumers on this issue by, for example, establishing a toll free phone number, an Internet web site, and a direct mailing effort.

Mr. Chairman, Amazon.com appreciates your invitation to provide its views on this important public policy matter and would welcome the opportunity to elaborate further on these comments.